

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

CHAMBERS BELT COMPANY,     )  
n/k/a BELT COMPANY,         )  
a Delaware corporation,       )  
                                  )  
                  Plaintiff/         )  
                  Counterclaim-Defendant, )

v.                                     )

C.A. No. N11C-02-124 DCS

TANDY BRANDS ACCESSORIES, )  
INC., a Delaware corporation, )  
                                  )  
                  Defendant/         )  
                  Counterclaim-Plaintiff. )

Submitted: April 2, 2012  
Decided: July 31, 2012

*Upon Plaintiff's Motion for a Finding of Res Judicata or Collateral Estoppel  
Motion **DENIED***

**MEMORANDUM OPINION**

*Appearances:*

Richard D. Kirk, Esquire, Wilmington, Delaware  
Attorney for Plaintiff Chambers Belt Company

Karl G. Randall, Esquire, Wilmington Delaware  
Attorney for Defendant Tandy Brands Accessories, Inc.

**STRETT, J.**

## **Introduction**

Plaintiff Chambers Belt Company, (“Chambers”), presents a motion to the Court for a finding that its interpretation of a Court of Chancery decision in a prior proceeding between Chambers and Defendant Tandy Brands Accessories, Inc., (“Tandy”), concerning the same contract dispute at issue, here, should be accorded *res judicata* or collateral estoppel effect. The Court of Chancery decision concerns whether a failure to comply with contractual mechanisms of an Asset Purchase Agreement, (the “APA”), should be determined by arbitration. The Court finds that *res judicata* and collateral estoppel do not apply to Chambers’ request.

## **Factual and Procedural Background**

In February 2011, Chambers commenced a breach of contract action in this Court against Tandy claiming damages in the amount of \$524,247. Tandy filed its counterclaim for breach of contract in the amount of \$201,000 or in the alternative \$609,000 along with a claim for unjust enrichment in the amount of \$609,000.

The dispute concerns the APA entered into by the parties in July 2009 pursuant to which Tandy agreed to purchase various assets from Chambers for a price that included a percentage of Tandy’s net sales for the 12-month period following the closing date, (the “Earn-Out Amount”). The Earn-Out Amount was to be paid on a monthly basis, and Chambers had a right of inspection as to

Tandy's books and records covering the net sales. In the event of a disagreement over the Earn-Out Amount, the APA provided dispute procedures which included specifics as to timing and notification.

After the final Earn-Out period in August 2010, Chambers audited Tandy's books and records and determined that Tandy owed Chambers \$524,257. On October 22, 2010, Chambers informed Tandy by means of an email letter that Chambers' analysis of the sales data was complete and showed a deficit of \$524,257. Chambers stated that some information was missing and it reserved the right to make a final assessment. Tandy did not pay the alleged deficit. On December 6, 2010, Tandy sent a letter informing Chambers that it was completing its own audit. According to the APA, the deadline for a response from Tandy to a confirmed understatement of net sales that is shown by audit to be due is 30-days after being given notice. In January 2011, Chambers made a written demand for payment of what it determined as a deficit. Tandy did not respond. Chambers then filed the action for breach of contract which is now before this Court. Tandy counterclaimed also for breach of contract.

In response to the lawsuit, Tandy petitioned the Court of Chancery to compel arbitration of the dispute. As a result, the parties stipulated to a stay of the proceedings in this Court pending a decision by the Court of Chancery. Regarding Tandy's petition to compel arbitration, the parties presented cross motions for

summary judgment, and, on September 21, 2011, the Court of Chancery granted such in favor of Chambers and found that the dispute was not subject to arbitration.<sup>1</sup>

The particular issue determined by the Court of Chancery was whether Tandy's alleged non-compliance with the contractual mechanism for giving Chambers notice that Tandy disputed the Earn-Out Amount was a question that is subject to arbitration under the APA.<sup>2</sup> The Court of Chancery found that it was not subject to arbitration.<sup>3</sup> That Court further found that the arbitration provision<sup>4</sup> in the APA is a narrow one that only encompasses disagreements over the specific dollar value of the Earn-Out Amount that could be determined by an accounting expert during arbitration; the arbitration provision does not encompass disagreements concerning *compliance with the contractual mechanisms* required<sup>5</sup> in order to arrive at an arbitrable disagreement over the dollar value of the Earn-

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<sup>1</sup> *Tandy Brands Accessories, Inc., v. Chambers Belt Co.*, C.A. No. 6342, at 33, 42 (Del. Ch. Sept. 2, 2011) (TRANSCRIPT).

<sup>2</sup> *Id.* at 33:15-43:11 (stating that “the parties never got to a disagreement over the earn-out amount that would be covered by [the language of the arbitration clause] because, at least as is *alleged* . . . from the . . . correspondence, there was never compliance with the timing requirements . . . .”)(emphasis added).

<sup>3</sup> *Id.* at 33.

<sup>4</sup> See APA, Sec. 3.1(e) (“Disputes regarding the . . . Earn-Out Amount which are in accordance with the terms hereof shall be resolved as follows: (i) the Parties shall cooperate in good faith to resolve any such dispute as promptly as possible; (ii) in the event that the Parties are unable to resolve any such dispute within 15 days . . . of notice of such dispute, such dispute . . . shall be submitted to, and all issues having a bearing on such dispute shall be resolved by an independent accounting firm . . .”).

<sup>5</sup> See APA, Sec. 3.1(d)(iv) (“In the event [an audit] confirms that the [Earn-Out Amount] ha[s] been understated, Tandy shall immediately pay the deficit amount shown to be due . . . unless Tandy disputes such deficient amount in good faith by written notice to Chambers within thirty (30) days after being given notice thereof by Chambers . . . If . . . Tandy and Chambers cannot reach an agreement on the Earn-Out Amount, all such disagreements shall be resolved in accordance with Section 3.1(e).”).

Out Amount.<sup>6</sup> The Court of Chancery specifically stated that competing interpretations of contractual terms are not something that the parties intended for accountants to delve into.<sup>7</sup> That Court also stated that the arbitration before accounting experts would only occur once the notice requirements of the APA have been properly met: “You don’t get to the accountant unless you’ve got a dispute that has been presented in accordance with the terms hereof.”<sup>8</sup>

In concluding its analysis, the Court of Chancery additionally found that “the question of whether Chambers’ notice was in compliance with the contractual mechanism is for a Court to decide.”<sup>9</sup>

### **Contentions of the Parties**

Chambers asserts that the Court of Chancery’s finding, that the timing requirements or contractual mechanisms of Section 3.1(d)(iv) of the APA were not complied with so as to result in an arbitrable dispute for an accounting expert to resolve, is equivalent to a finding that Tandy due to an untimely email failed to raise an arbitrable dispute and, therefore, an Earn-Out Amount deficit immediately became due and owing to Chambers. Thus, Chambers asks for its own interpretation of the Court of Chancery finding to be to be given *res judicata* or collateral estoppel effect as to the litigation proceeding before this Court.

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<sup>6</sup> *Tandy Brands Accessories, Inc.*, at 38-40 (emphasis added).

<sup>7</sup> *Id.* at 39.

<sup>8</sup> *Id.* at 39-40.

<sup>9</sup> *Id.* at 42.

Tandy contends that the Court of Chancery specifically did not rule on the issue of whether *only Tandy* failed to comply with the contractual mechanisms of the APA but merely determined that Tandy’s untimely response was one reason that the contractual mechanism failed and, as a result, the parties did not arrive at an arbitrable dispute over the Earn-Out Amount.

The Court agrees that the Court of Chancery determined that “there was never compliance with the timing requirements,”<sup>10</sup> and, therefore, the parties did not arrive at a disagreement over the Earn-Out Amount that would be subject to the arbitration provision. The Court, however, does not agree with Chambers’ assertion that the Court of Chancery determined that the non-compliance with contractual provisions was due to Tandy’s conduct.

### **Discussion**

The doctrine of *res judicata* bars litigation of issues decided in a previous suit.<sup>11</sup> The purpose of the doctrine is to prevent unnecessary litigation “by limiting parties to one fair trial of an issue or cause of action.”<sup>12</sup> *Res judicata* gives preclusive effect where:

- 1) The original court had jurisdiction over the subject matter and parties;
- 2) The parties to the original action were the same as or in privity with the parties of the instant action;
- 3) The original action or issue decided therein was the same as that of the instant action;

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<sup>10</sup> *Id.* at 39.

<sup>11</sup> *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191-192 (Del. 2009).

<sup>12</sup> *Id.*

- 4) The issue in the prior action was decided against the appellant in the instant action; and
- 5) The judgment in the prior action was final.<sup>13</sup>

*Res judicata*, however, does not bar litigation of an issue that had not been decided in the previous action.<sup>14</sup> “Under the doctrine of *res judicata*, a party is foreclosed from bringing a second suit based on the same cause of action after a judgment has been entered in a prior suit involving the same parties.”<sup>15</sup>

Under the doctrine of collateral estoppel, however, a party is foreclosed from relitigating in a subsequent action a previous court’s factual finding that was necessary for that prior decision in an action involving the same parties even if the cause of action is not the same.<sup>16</sup> In effect, the *res judicata* doctrine bars reconsideration of issues of law previously adjudicated while collateral estoppel bars relitigation of issues of fact previously adjudicated.<sup>17</sup>

In this matter, the present action involves the same subject matter (the APA) and involves the same parties (Chambers and Tandy) as the litigation in the Court of Chancery action. However, the cause of action brought here—breach of contract—is not the same as the action brought in the Court of Chancery—petition to compel arbitration.

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<sup>13</sup> *Id.* at 192.

<sup>14</sup> *Id.*

<sup>15</sup> *Betts v. Townsends, Inc.*, 765 A.2d 531, 534 (Del. 2000).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Moreover, the issue of law decided in the Court of Chancery action was whether the matter presented should go to arbitration. That Court found that the contractual mechanisms of the APA were not met so as to result in a dispute over the dollar value of the Earn-Out Amount that an accounting expert could address at arbitration. While Chambers argues that the Court of Chancery found that Tandy's arguably untimely email was the reason for non-compliance with the contractual mechanisms of the APA and that finding should be given *res judicata* or collateral estoppel effect in the present action, the particular language of the Court of Chancery decision does not affirmatively state that Tandy's failure caused the non-compliance.

On the other hand, Tandy argues that the Court of Chancery merely made a factual determination that "Tandy's December 6 email was not delivered within 30 days of Chambers' October 22 letter."<sup>18</sup> Tandy further asserts that this factual finding as to its late email is only one of several findings that would be necessary to determine whether the contractual mechanisms of the APA were or were not complied with, and, therefore, cannot be dispositive as to whether the Earn-Out Amount is due and owing.

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<sup>18</sup> Defendant's Answering Brief Regarding *Res Judicata* and Collateral Estoppel, p. 16 (Mar. 16, 2012).

Nevertheless, while the Court of Chancery stated that “there was never compliance with the timing requirements,”<sup>19</sup> it did not specifically state that the lack of compliance resulted from a failure on Tandy’s part, or, for that matter, on Chambers’ part. When discussing the “clean legal issue” before it, the Court of Chancery found that the question of “whether Tandy complied with the contractual notice requirement for giving Chambers notice that it disputed the earn-out calculations . . . is not subject to arbitration.”<sup>20</sup> Thus, the issue before the Court of Chancery was whether the factual question as to Tandy’s conduct could be arbitrated *not* whether Tandy’s conduct caused non-compliance.

The Court of Chancery found that the arbitration provision in the APA was a narrow one and merely covered disagreements to the specific dollar value of the Earn-Out Amount such that an accounting expert could determine but did not cover “any of the back and forth” related to the notice requirements and contractual mechanisms of reaching a disagreement on the numbers.<sup>21</sup> Since the question of whether Tandy complied with the notice requirement is part of the “back and forth” not covered by the arbitration provision and since the Court of Chancery simply determined that “there was never compliance with the timing requirements,” the question as to *Tandy’s* particular conduct is still an open one. As such, the only finding that could be given either *res judicata* or collateral

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<sup>19</sup> *Tandy Brands Accessories, Inc.* at 39.

<sup>20</sup> *Id.* at 33.

<sup>21</sup> *Id.* at 38.

estoppel effect is that the disagreement is not arbitrable due to a lack of compliance with the timing requirements of the APA. How this non-compliance occurred, which party did what and when, and the concomitant interpretation of the language of the contractual mechanism have not yet been decided and are precisely what “some court is going to have to interpret the plain meaning of or determine is ambiguous . . . .”<sup>22</sup>

Therefore, the Court finds that *res judicata* and collateral estoppel do not apply to Chambers’ subjective interpretations (Chambers’ claims that Tandy did not comply with the contractual mechanisms of the APA and that Tandy owes Chambers an Earn-Out deficit) of the Court of Chancery’s decision. The issue of law decided by the Court of Chancery, and to be given *res judicata* effect in this litigation, is that the parties’ disagreement over contractual compliance is not subject to arbitration.

### **Conclusion**

**ACCORDINGLY**, as discussed above, Chambers’ motion for a finding of *res judicata* or collateral estoppel is denied.

IT IS SO ORDERED.

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Streett, J.

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<sup>22</sup> *Id.* at 38-39.